

03-26-06

JFAY D A C

PTO/SB/64 (10-05)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)</b>		Docket Number (Optional) BBC-128/1
--	--	---------------------------------------

First named inventor: Carl M. Mendel

Application No.: 10/828,607

Art Unit: 1614

Filed: April 21, 2004

Examiner: Cook, R.

Title: TREATMENT OF FIBROMYALGIA

03/27/2006 TBESHAKI 00000017 010025 10828607

01 FC:1453 1500.00 DA

Attention: Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

#### APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

Small entity-fee \$ \_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

Other than small entity - fee \$ 1,500.00 (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Terminal Disclaimer, RCE and Preliminary Amendment (identify type of reply):

has been filed previously on \_\_\_\_\_.  
 is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_.  
 has been paid previously on \_\_\_\_\_.  
 is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450: DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**3. Terminal disclaimer with disclaimer fee**

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

**4. STATEMENT:** The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature

March 23, 2006

Date

Gayle B. O'Brien

Typed or printed name

48,812

Registration Number, if applicable

100 Research Drive

Address

(508) 688-8053

Telephone Number

Worcester, MA 01605-4314

Address

Enclosures:  Fee Payment

Reply

Terminal Disclaimer Form

Additional sheets containing statements establishing unintentional delay

Other: Request for Continued Examination (RCE), Preliminary Amendment

**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (571) 273-8300.

March 23, 2006

Date

Signature

Lisa Rasmussen

Typed or printed name of person signing certificate



PATENT  
Attorney Docket No.BBC-128/1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:  
**Carl M. Mendel et al.**

APPLICATION NO.: **10/828,607**

FILED: **April 21, 2004**

FOR: **Treatment of Fibromyalgia**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

EXAMINER: R. Cook  
ART UNIT: 1614

APPLICATION NO.: **10/828,607:**  
I hereby certify under 37 CFR 1.10 that this correspondence is being transmitted the USPTO on the date indicated below via express class mail and is addressed to Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.  
Date of Deposit March 23, 2006  
Lisa Rasmussen  
Lisa Rasmussen  
Express Mail Label# FQ4436124654S

Sir:

PETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION  
UNDER 37 C.F.R. §1.137(b)

On December 20, 2005 the undersigned received a telephone call from Examiner Cook asking whether a Reply was sent in response to the Final Office Action mailed June 17, 2005. Upon checking the case file, the department electronic docketing system and my own personal docketing system I found no record of receiving the Final Office Action and so informed Examiner Cook. Examiner Cook instructed me to call Brenda Gray at the USPTO to determine how to proceed.

I telephoned Brenda Gray on December 20 and 21, 2005 and January 4 and 5, 2006. When I spoke with her on January 5, 2006, Ms. Gray informed me that the instant case was listed as abandoned as of December 17, 2006 and instructed me to file a Petition for Revival.

Applicants filed a Petition to Revive Unavoidably Abandoned Application under 37 C.F.R. §1.137(a) on January 17, 2006. Attached herewith as Exhibit 1 is a copy of the Petition as filed and its accompanying Exhibit A.

On March 10, 2006 the United States Patent Office dismissed the above-identified Petition to Revive Under 37 C.F.R. §1.137(a). Accordingly, Applicants herewith petition to

revive the instant application under 37 C.F. R. §1.137(b) and are simultaneously filing a Request for Continued Examination.

The entire delay in filing the required reply from the due date for the reply until the filing of the instant petition was unintentional.

If the Examiner requires any additional information, Applicants invite the Examiner to call Applicants' agent at the number noted below.

Respectfully submitted,

Date: March 23, 2004

Gayle O'Brien

**Gayle O'Brien**  
Agent for Applicants  
Reg. No. 48,812

Abbott Bioresearch Center  
100 Research Drive  
Worcester, MA 01605  
(508) 688-8053



## Exhibit 1

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Carl M. Mendel

Serial No.: 10/828,607

Filed: April 21, 2004

Entitled:

Attorney Docket No. BBC-128/1

ART UNIT: 1614

EXAMINER: Cook, Rebecca

#### Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

#### CERTIFICATE OF MAILING BY "EXPRESS MAIL"

The undersigned hereby certifies that this correspondence listed below is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" Service under 37 CFR §1.10, postage prepaid, Express Mailing Label No: EQ147670403US, in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

January 17, 2006

date of mailing and signature

Lisa Rasmussen

#### TRANSMITTAL LETTER

Sir/Madam:

Transmitted herewith are: [X] Petition to Revive Unavoidably Abandoned Application Under 37 C.F.R. §1.137(a) with Exhibit A; and [X] An Acknowledgement Postcard; to be filed in the above-identified patent application.

#### FEE FOR ADDITIONAL CLAIMS

[X] A fee for additional claims is not required.

[ ] A fee for additional claims is required. The additional fee has been calculated as shown below:

	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	NUMBER OF EXCESS CLAIMS	RATE	FEES DUE
TOTAL CLAIMS			0	× \$18	= 0.00
INDEPENDENT			0	× \$84	= 0.00
FIRST INTRODUCTION OF MULT. DEPENDENT CLAIM				+\$280	= 0.00
TOTAL FEES DUE					= 0.00

PAYMENT OF ADDITIONAL FEES

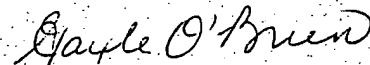
[X] The Commissioner is hereby authorized to charge payment of the additional fee of \$500.00 required under 37 CFR 1.117(l) in connection with the paper(s) transmitted herewith, to Deposit Account No. 010025. A duplicate copy of this transmittal letter is transmitted herewith.

PETITION FOR EXTENSION OF TIME

[ ] Extension is requested under 37 CFR 1.136(a), and the following extension fee is applicable for the paper(s) filed herewith: [ ] \$120.00 for response within first month pursuant to 37 CFR 1.17(a)(1);  
[ ] \$450.00 for response within second month pursuant to 37 CFR 1.17(a)(2);  
[ ] \$1,020.00 for response within third month pursuant to 37 CFR 1.17(a)(3);  
[ ] \$1,590.00 for response within fourth month pursuant to 37 CFR 1.17(a)(4);  
[ ] \$2,160.00 for response within fifth month pursuant to 37 CFR 1.17(a)(5).

[X] The Commissioner is hereby authorized to charge payment of any additional fees required in connection with the paper(s) transmitted herewith, or to credit any overpayment of same, to Deposit Account No. 010025. A duplicate copy of this transmittal letter is transmitted herewith.

Respectfully submitted,



Gayle B. O'Brien  
Agent for Applicant  
Registration No. 48,812  
Abbott Bioresearch Center  
100 Research Drive  
Worcester, MA 01605-4314  
Telephone: (508) 688-8053  
Telefax: (508) 688-8110

PATENT  
Attorney Docket No. BBC-128/1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

Carl M. Mendel et al.

APPLICATION NO.: 10/828,607

FILED: April 21, 2004

FOR: Treatment of Fibromyalgia

EXAMINER: R. Cook  
ART UNIT: 1614

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

PETITION TO REVIVE UNAVOIDABLY ABANDONED APPLICATION  
UNDER 37 C.F.R. §1.137(a)

On December 20, 2005 the undersigned received a telephone call from Examiner Cook asking whether a Reply was sent in response to the Final Office Action mailed June 17, 2005. Upon checking the case file, the department electronic docketing system and my own personal docketing system I found no record of receiving the Final Office Action and so informed Examiner Cook. Examiner Cook instructed me to call Brenda Gray at the USPTO to determine how to proceed.

I telephoned Brenda Gray on December 20 and 21, 2005 and January 4 and 5, 2006. When I spoke with her on January 5, 2006, Ms. Gray informed me that the instant case was listed as abandoned as of December 17, 2006 and instructed me to file a Petition for Revival.

The delay in replying to the Final Office Action mailed June 17, 2005 was unavoidable because Applicants had no record of receiving the instant office action. Due to the Christmas and New Year's holidays Applicants were unable to submit the instant petition until today.

Attached as Exhibit A is a copy of the Procedure for Incoming Mail in the Patent Department at Abbott Bioresearch Center. All mail is docketed in IP Master, the department's

electronic database and docketing system. Each attorney/agent also docketes any due dates on his/her own docketing system.

Applicants respectfully request that the instant application be revived and have included the fee of \$500 as specified under 37 C.F.R. 1.117(l).

If the Examiner requires any additional information, Applicants invite the Examiner to call Applicants' agent at the number noted below.

Respectfully submitted,

Date: January 17, 2006

Gayle O'Brien

**Gayle O'Brien**  
Agent for Applicants  
Reg. No. 48,812

Abbott Bioresearch Center  
100 Research Drive  
Worcester, MA 01605  
(508) 688-8053

## Exhibit A

### Procedure for Incoming Mail Patent Department Abbott Bioresearch Center

- ⊕ The secretary collects the incoming mail from all in boxes 2 times daily.
- ⊕ The secretary opens and date stamps all incoming mail and hands to the paralegal.
- ⊕ The paralegal goes through and docketes all incoming mail into IP Master database..
- ⊕ Upon completion of docketing, the paralegal takes any mail which contains urgent actions (requires response with 5 days) directly to the attorney/agent. All non-urgent correspondence is place in the in-box of the corresponding attorney/agent.
- ⊕ Upon receiving his/her mail, each attorney/agent reviews his/her mail and docketes any due dates on his/her own due date tracking list.